

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA**

Tanika Lavet Wallace,)	
)	
Plaintiff,)	
)	Civil Action No. 1:22-3691-RMG
vs.)	
)	
Kilolo Kijakazi, Acting Commissioner)	
of Social Security,)	ORDER
)	
Defendant.)	
_____)	

Plaintiff brought this action pursuant to 42 U.S.C. § 405(g) seeking judicial review of the final decision of the Commissioner of Social Security denying her claim for disability insurance benefits (“DIB”). In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 DSC, this matter was referred to a United States Magistrate Judge for pre-trial handling. The Magistrate Judge issued a Report and Recommendation (“R & R”) on August 23, 2023, recommending that the Commissioner’s decision be affirmed. (Dkt. No. 17). Plaintiff filed no objections to the R & R.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge. 28 U.S.C. § 636(b)(1).

The role of the federal judiciary in the administrative scheme established by the Social Security Act is a limited one. The Act provides that the “findings of the Commissioner of Social

Security as to any fact, if supported by substantial evidence, shall be conclusive.” 42 U.S.C. § 405(g). “Substantial evidence has been defined innumerable times as more than a scintilla, but less than preponderance.” *Thomas v. Celebrezze*, 331 F.2d 541, 543 (4th Cir. 1964). This standard precludes *de novo* review of the factual circumstances that substitutes the Court’s findings of fact for those of the Commissioner. *Vitek v. Finch*, 438 F.2d 1157, 1157 (4th Cir. 1971).

Although the federal court’s review role is a limited one, “it does not follow, however, that the findings of the administrative agency are to be mechanically accepted. The statutorily granted right of review contemplates more than an uncritical rubber stamping of the administrative action.” *Flack v. Cohen*, 413 F.2d 278, 279 (4th Cir. 1969). Further, the Commissioner’s findings of fact are not binding if they were based upon the application of an improper legal standard. *Coffman v. Bowen*, 829 F.2d 514, 519 (4th Cir. 1987).

Plaintiff was 45 years old at the time of her administrative hearing and had past relevant work as a social services caseworker and school bus driver. The Administrative Law Judge (“ALJ”) found that Plaintiff had the following severe impairments: degenerative disc disease, dysfunction of ankle joints, fibromyalgia, neuropathy, and obesity. (Dkt. No. 8-2 at 16-19). The ALJ concluded that notwithstanding these severe impairments, she retained the residual functional capacity to perform less than the full scope of sedentary work and was capable of performing her past work as a social service caseworker. (*Id.* at 21-29).

On appeal from the denial of her claim for disability, Plaintiff asserted that the ALJ failed to evaluate her fibromyalgia in accord with SSR 12-2p and did not properly evaluate the opinion of Dr. Morton, a one time consultive mental health examiner. The Magistrate Judge analyzed in

detail Plaintiff's objections to the ALJ's decision and concluded that there was substantial evidence in the record to support the Commissioner's decision. As previously mentioned, Plaintiff filed no objections to the Magistrate Judge's R & R.

The Court finds that the Magistrate Judge ably analyzed the factual and legal issues presented on appeal and correctly concluded that the decision of the Commissioner should be affirmed. The Court adopts the R & R of the Magistrate Judge (Dkt. No. 17) as the order of the Court. The decision of the Commission is affirmed.

AND IT IS SO ORDERED.

s/Richard M. Gergel
Richard Mark Gergel
United States District Judge

Charleston, South Carolina
September 15, 2023